

Minoguc et al.

S/N:10/605,805

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as "Invention I", deemed drawn to a system method for enabling an option resident on an in-field device wherein the in-field device is located remotely from a centralized facility and receiving an activation key from a first location and configured to activate an option of an in-field device located in a second location, and corresponding to claims 1-10 and 18-23.

REMARKS

The Examiner has identified two "inventions" in the pending claims. The Examiner's classification of the "inventions" include Group I consisting of claims 1-10 and 18-23 drawn to a system and method for enabling an option resident on an in-field device wherein the in-field device is located remotely from a centralized facility and receiving an activation key from a first location and configured to activate an option of an in-field device located in a second location, and classified by the Examiner in class 709, subclass 243, and Group II consisting of claims 11-17 drawn to a system a centralized facility located remotely from an in-field device having an inactive option and request an activation from another remote location and classified by the Examiner in class 710, subclass 8.

The Examiner stated that inventions I and II are related under MPEP §806.05(d) "as subcombinations disclosed as usable together in a single combination." *Office Action, August 16, 2005, p. 2*. However, Applicant respectfully disagrees.

MPEP §806.05(d) requires that two or more subcombinations be disclosed as usable together in a single combination to support a restriction. Inventions I and II, as identified by the Examiner, are not subcombinations disclosed as usable together in a single combination. Rather, claims 1-10, 11-17, and 18-23 each identify alternatives of the disclosed invention as set forth by the Applicant.

Further, even if inventions I and II, as identified by the Examiner, were subcombinations disclosed as usable together in a single combination, the example provided by the Examiner shows that inventions I and II do not have separate utility as required to support a restriction requirement. Specifically, the Examiner stated that "[i]n the instant case, invention II has separate utility such as receiving an activation key from a first location and configured to activate an option of an in-field device located in a second location." *Office Action, August 16, 2005, p. 2 (emphasis added)*. Claim 1 of invention I, however, calls for "receiving, at a centralized facility,

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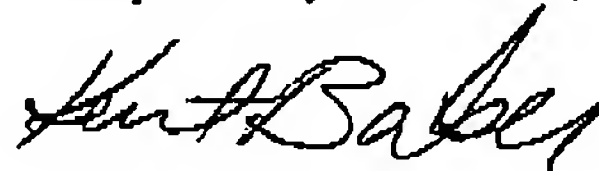
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an activation key sent from a first location and configured to activate an option of an in-field device located in a second location." As the substantial underscoring illustrates, the Examiner's example of separate utility for invention II includes the subject matter present in invention I. Therefore, the Examiner has failed to establish that inventions I and II have separate utility.

Also, to support restriction, the Examiner must establish reasons for insisting upon restriction by appropriate explanation of one of the following: (A) separate classification thereof, (B) a separate status in the art when they are classifiable together, or (C) a different field of search. *See MPEP §808.02*. While the Examiner has separately classified each of the inventions, in light of the redundancies in the claimed elements between inventions, any search of invention I would necessarily include a search of invention II. As such, a search and examination of both inventions does not place an undue burden on the Examiner. Since the Examiner has not appropriately set forth why restriction is required to remove an undue burden on the Examiner, the restriction cannot be sustained.

For all these reasons, Applicant respectfully requests rejoinder of all claims, of each group. The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,



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